

Gary M. Zadick
UGRIN ALEXANDER ZADICK, P.C.
#2 Railroad Square, Suite B
P.O. Box 1746
Great Falls, MT 59403-1746
Telephone: 406-771-0007
Facsimile: 406-452-9360
gmz@uazh.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
GREAT FALLS DIVISION

COLONY INSURANCE COMPANY,

Cause No.

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE
COMPANY AND SLETTEN
CONSTRUCTION COMPANY,

**COMPLAINT FOR
DECLARATORY RELIEF**

Defendants.

Plaintiff, Colony Insurance Company, by and through its attorneys, submits its Complaint for Declaratory Judgment and states as follows:

JURISDICTION

1. Plaintiff Colony Insurance Company is a corporation organized and existing under the laws of the Commonwealth of Virginia with its principal place of business in the Commonwealth of Virginia.

2. Defendant Liberty Mutual Insurance Company is a corporation organized

and existing under the law of the Commonwealth of Massachusetts with its principal place of business in the Commonwealth of Massachusetts. Liberty Mutual Insurance Company, upon information belief, insures Defendant Sletten Construction Company.

3. Sletten Construction Company is a corporation organized under the laws of the State of Montana with its principal place of business in the State of Montana.

4. This case involves an insurance coverage dispute and the claims and demands in the underlying case and cost of defense exceed \$75,000, exclusive of interest and costs.

5. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the controversy herein between citizens of different states.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1331 because Defendant Sletten Construction Company is located in the Great Falls Division of this District Court.

GENERAL ALLEGATIONS

7. This is a Complaint for a Declaratory Judgment, brought pursuant to 28 U.S.C. §§ 2201 and 2202, for the purpose of determining a question and actual controversy between the parties as hereinafter more fully appears.

8. On March 30, 2018 Christopher G. Forsman, as Plaintiff, filed suit in Montana Eighth Judicial District Court, Cascade County in Cause No. BDV-18-0185

seeking damages and recovery from Sletten Construction Company the Defendant named in the underlying action. A true and correct copy of the underlying Complaint is attached hereto as **Exhibit A.**

9. In the underlying action Christopher G. Forsman alleges that his injuries were caused by the negligence of Defendant Sletten Construction Company.

10. On information and belief, Liberty Mutual Insurance Company has undertaken the defense of Sletten Construction in the underlying action.

11. Defendant Liberty Mutual Insurance Company has made demand upon Plaintiff Colony insurance company to defend and indemnify Defendant Sletten Construction in the underlying action.

12. Pursuant to the demand by Liberty Mutual Insurance Company Plaintiff Colony Insurance Company has offered to undertake the defense of the underlying matter going forward under the express reservation of its right to recover its defense fees and expenses on the basis that there is no duty to defend nor indemnify Sletten Construction Company with respect to the underlying action.

13. Under the policy of insurance issued by Colony Insurance to its insured Grizzly Steel, Inc. certain coverage for additional insureds was extended, however, the additional insured coverage does not cover the claims in the underlying action brought against Sletten Construction. The claims in the underlying action are based upon the alleged acts, errors and omissions of Sletten Construction Company directly and not as

a result of any alleged breach of duty, act, error or omission of Grizzly Steel, Inc.

JUSTICIABLE CONTROVERSY

14. Under the law of Montana, § 18-2-124, MCA it is against public policy and void as a matter of law for any construction contract to require one party to indemnify the other against the others own negligence.

15. In addition, the additional insured endorsement contained in the policy of insurance, **Exhibit B**, consistent with the public policy of Montana, does not extend coverage to an additional insured unless the bodily injury was caused “in whole or in part” by the named insured, Grizzly Steel, and is further limited in that it only affords coverage “to the extent permitted by law”.

16. The underlying action, as stated in the Complaint, **Exhibit A**, is based solely upon allegations of acts, errors and omissions of Sletten Construction and is not based upon any act, error omission of Grizzly Steel.

17. Based upon the law of Montana and the additional insured endorsement addressed above, there is an actual, real and substantial controversy of a justiciable nature now existing between Plaintiff Colony Insurance Company and Defendants Liberty Mutual Insurance Company and Sletten Construction as described above.

18. By order and decree herein, all rights and legal relations of the parties should be immediately, definitely and judicially determined, adjudicated and declared.

WHEREFORE, Colony Insurance Company prays to the Court for:

1. A declaratory judgment that it has no duty under the policy of insurance to defend or indemnify Sletten Construction Company in the underlying suit.
2. A declaratory judgment that it may recoup any funds it has paid in the defense of the underlying action.
3. For such other and further relief as may be just and equitable.

DATED this 15th day of April, 2019.

UGRIN ALEXANDER ZADICK, P.C.

By: /s/ Gary M. Zadick
Gary M. Zadick
#2 Railroad Square, Suite B
P.O. Box 1746
Great Falls, Montana 59403
Attorneys for Plaintiff